

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Request for Waiver by)

Chicago Public Schools)
Chicago, Illinois)

File No. SLD-294276

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

Changes to the Board of Directors of the)
National Exchange Carrier Association)CC Docket No. 97-21**ORDER****Adopted: September 22, 2003****Released: September 23, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1 In this Order, the Telecommunications Access Policy Division grants the request of Chicago Public Schools, Chicago, Illinois (Chicago PS), for a waiver of the September 30, 2003 deadline for installation of non-recurring services for schools and libraries receiving universal service funding for Funding Year 2002 of the program.¹ Specifically, we find that Chicago PS is entitled to a waiver of section 54.507(d) of the Commission's rules, which requires recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services by September 30 following the close of the funding year.² We extend the deadline for implementation of non-recurring services for Funding Request Number (FRN) 753376 to September 30, 2004.

2. Chicago PS requests an extension of the non-recurring service installation deadline for FRN 753376.³ In its Request for Waiver, Chicago PS indicates that its service provider will be unable to complete installation for several reasons. First, there is a shortage of qualified electricians in the Chicago metropolitan area.⁴ As a result, in order complete design and wiring of Year 2002 schools by September 2003, its service provider, SBC DataComm

¹ Letter from Arne Duncan, Chicago Public Schools, to Federal Communications Commission, filed May 15, 2003 (Request for Waiver)

² See 47 C.F.R. § 54.507(d)

³ Request for Waiver.

⁴ *Id.* at 3.

indicates that the District would have to pay a significant increase in labor costs.⁵ In addition, Chicago PS indicates that the District is conducting its triennial review of contractors, which has further limited the pool of pre-qualified contractors.⁶ Finally, Chicago PS states that there have recently been transitions in the District's senior management team.⁷

3 At the outset, we note that Chicago PS's request for an extension does not satisfy any of the four criteria for an automatic one-year extension under section 54.507(d)(1) – (4) of the Commission's rules.⁸ Chicago PS received its FCDL prior to March 1, 2003, and therefore pursuant to the Commission's rules, its vendor must complete installation of the Funding Year 2002 non-recurring services prior to September 30, 2003.⁹ Chicago PS also does not satisfy the criterion at section 54.507(d)(3) of the Commission's rules, which allows for an automatic extension if the applicant's service provider cannot complete the installation before the scheduled deadline due to circumstances beyond its control.¹⁰ SBC DataComm has stated that it does have the capability to meet the September 30, 2003 deadline, albeit with increased hardship and cost.¹¹ Because Chicago PS's situation does not fit within any of the four criteria under section 54.507(d) of our rules, we now consider Chicago PS's request for a waiver of section 54.507(d) of our rules.

4 The Commission may waive any provision of its rules on its own motion and for good cause shown.¹² A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.¹³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁵

5 We conclude that special circumstances exist to justify a waiver of section 54.507(d) of the Commission's rules as requested by Chicago PS. Specifically, we find that the potential hardships that would be incurred by Chicago PS, including financial hardships, if its service provider were forced to compress its installation schedule, justifies a waiver in this

⁵ *Id.* at 2-3, Letter from Marian Mulchrone, Vice President, SBC DataComm, to David Vitale, Action CIO, Chicago Public Schools, dated May 12, 2003 (SBC DataComm Letter).

⁶ *Request for Waiver* at 2

⁷ *Id.*

⁸ 47 C.F.R. § 54.507(d)(1) – (4). *See also Federal-State Joint Board on Universal Service*, Report and Order, CC docket No. 96-45, 16 FCC Rcd 13510 (2001) (*Non-Recurring Service Order*).

⁹ *See* 47 C.F.R. § 54.507(d)(1)

¹⁰ 47 C.F.R. § 54.507(d)(3).

¹¹ *See* SBC DataComm Letter.

¹² 47 C.F.R. § 1.3

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), affirmed by *WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972)

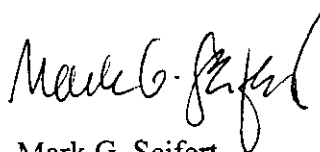
¹⁵ *Northeast Cellular*, 897 F.2d at 1166.

instance.¹⁶ In this situation, requiring strict adherence to section 54.507(d) of the Commission's rules would impose an impractical and unreasonable hardship on Chicago PS. The significant added costs of a compressed construction schedule would undermine the statutory purpose of supporting eligible schools and libraries.

6. A waiver, in this instance, will increase the likelihood that Chicago PS may successfully utilize discounts available from the schools and libraries universal service mechanism, and Chicago will not be penalized for missing the installation deadline, through no fault of its own. We believe, in summary, that it would be consistent with the public interest and the intent of section 254 of the Communications Act to grant Chicago PS's request and thus extend the deadline for installation of Funding Year 2002 non-recurring services for FRN 753376 by one year, to September 30, 2004. This is consistent with the Commission's finding in the *Non-Recurring Services Order* that external circumstances can create situations where deadlines are both impractical and unreasonable, as well as the Commission's and the Bureau's long-standing policy of ensuring that applicants for non-recurring services are not penalized for delays that are not within their control.¹⁷

7. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 U.S.C. §§ 0.91, 0.291, 1.3, and 54.722(a) that the request for waiver of section 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d), filed by Chicago Public Schools, Chicago, Illinois on May 15, 2003, IS GRANTED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁶ See, e.g., *Buffalo City School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, Order, CC Docket Nos. 96-45 and 97-21, 17 FCC Rcd 11881 (Wireline Comp. Bur. 2002).

¹⁷ *Non-Recurring Services Order*, 16 FCC Rcd at 13512, para. 11. See also *Request for Waiver of the September 30, 2000 Deadline for Implementation of Non-Recurring Services by Baldwin County Board of Education*, *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 16 FCC Rcd 7053 (Com. Car. Bur. 2001).